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**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Statement of Issues Against:

Case No. S-374

ALDEN EDWARD CLARK
1754 Autumn Mist Drive
Palmdale, California 93551

STATEMENT OF ISSUES

Respondent.

Complainant alleges:

PARTIES

1. Stephanie Nunez (Complainant) brings this Statement of Issues solely in her official capacity as the Executive Officer of the Respiratory Care Board of California, (Board) Department of Consumer Affairs.

2. On or about November 7, 2005, the Board received an application for a Respiratory Care Practitioner License from Alden Edward Clark (Respondent). On or about October 3, 2005, Respondent certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application. The Board denied the application on November 9, 2006.

JURISDICTION

3. This Statement of Issues is brought before the Board under the authority of

1 the following laws. All section references are to the Business and Professions Code (Code) unless
2 otherwise indicated.

3 4. Section 3710 of the Code states: “The Respiratory Care Board of California,
4 hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3, the
5 Respiratory Care Practice Act].”

6 5. Section 3718 of the Code states: “The board shall issue, deny, suspend, and
7 revoke licenses to practice respiratory care as provided in this chapter.”

8 6. Section 3732, subdivision (b) of the Code states:
9 “The board may deny an application, or may order the issuance of a license
10 with terms and conditions, for any of the causes specified in this chapter for
11 suspension or revocation of a license, including, but not limited to, those causes
12 specified in Sections 3750, 3750.5, 3752.5, 3752.6, 3755, 3757, 3760, and 3761.”

13 7. Section 3750 of the Code states:
14 “The board may order the denial, suspension or revocation of, or the
15 imposition of probationary conditions upon, a license issued under this chapter, for
16 any of the following causes:

17 “ . . .

18 “(d) Conviction of a crime that substantially relates to the qualifications,
19 functions, or duties of a respiratory care practitioner. The record of conviction or a
20 certified copy thereof shall be conclusive evidence of the conviction.

21 “. . . .”

22 8. Section 3752 of the Code states:
23 “A plea or verdict of guilty or a conviction following a plea of nolo
24 contendere made to a charge of any offense which substantially relates to the
25 qualifications, functions, or duties of a respiratory care practitioner is deemed to be
26 a conviction within the meaning of this article. The board shall order the license
27 suspended or revoked, or may decline to issue a license, when the time for appeal
28 has elapsed, or the judgment of conviction has been affirmed on appeal or when an

1 order granting probation is made suspending the imposition of sentence, irrespective
2 of a subsequent order under Section 1203.4 of the Penal Code allowing the person
3 to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside
4 the verdict of guilty, or dismissing the accusation, information, or indictment.”

5 9. Section 3752.5 of the Code states:

6 “For purposes of Division 1.5 (commencing with Section 475), and this
7 chapter [the Respiratory Care Practice Act], a crime involving bodily injury or
8 attempted bodily injury shall be considered a crime substantially related to the
9 qualifications, functions, or duties of a respiratory care practitioner.”

10 10. California Code of Regulations, Title 16, section 1399.370, states:

11 “For the purposes of denial, suspension, or revocation of a license, a crime
12 or act shall be considered to be substantially related to the qualifications, functions
13 or duties of a respiratory care practitioner, if it evidences present or potential
14 unfitness of a licensee to perform the functions authorized by his or her license or in
15 a manner inconsistent with the public health, safety, or welfare. Such crimes or acts
16 shall include but not be limited to those involving the following:

17 “ . . .

18 “(c) Conviction of a crime involving driving under the influence or reckless
19 driving while under the influence.

20 “. . . .”

21 COST RECOVERY

22 11. Section 3753.5, subdivision (a) of the Code states:

23 "In any order issued in resolution of a disciplinary proceeding before the
24 board, the board or the administrative law judge may direct any practitioner or
25 applicant found to have committed a violation or violations of law to pay to the
26 board a sum not to exceed the costs of the investigation and prosecution of the
27 case."
28

1 12. Section 3753.7 of the Code states:

2 "For purposes of the Respiratory Care Practice Act, costs of prosecution
3 shall include attorney general or other prosecuting attorney fees, expert witness fees,
4 and other administrative, filing, and service fees."

5 13. Section 3753.1, subdivision (a) of the Code states:

6 "An administrative disciplinary decision imposing terms of probation may
7 include, among other things, a requirement that the licensee-probationer pay the
8 monetary costs associated with monitoring the probation."

9 CAUSE FOR DENIAL OF APPLICATION

10 (Conviction of a Crime)

11 14. Respondent's application is subject to denial under Code sections
12 3750, subdivision (d), 3752, 3752.5 and California Code of Regulations, Title 16, section
13 1399.370, subdivision (c), in conjunction with section 3732, subdivision (b), in that
14 respondent has sustained convictions of crimes substantially related to the qualifications,
15 functions and duties of a respiratory care practitioner. The circumstances are as follows:

16 June 12, 1998 Conviction

17 A. On or about March 19, 1998, Los Angeles County deputy sheriffs
18 attempted to make an enforcement stop when they observed Respondent drive his
19 vehicle through a red light and exceed the speed limit. Respondent ignored the
20 deputies' attempt to stop him. He accelerated, hit a curb, and was forced to stop due
21 to extensive damage to his car. Upon contact with Respondent, the deputies noticed
22 his breath had a strong odor of alcohol, his eyes were bloodshot and watery, his
23 speech was slow and slurred, and his behavior was belligerent and argumentative.
24 When he exited his vehicle, he staggered and had difficulty walking. The results of
25 Respondent's breath test indicated his blood alcohol level was .12%.

26 B. On or about April 16, 1998, in Los Angeles County Municipal Court
27 Complaint No. 8CM03133, Respondent was charged with violating Vehicle Code
28 sections 23152(a), driving under the influence of alcohol (Count 1); 23152(b),

1 driving with .08% or higher blood alcohol level (Count 2); 14601.1(a), driving with
2 a suspended license (Count 3); and 2800.1(a), evading arrest (Count 4).

3 C. On or about June 12, 1998, pursuant to a negotiated plea agreement,
4 Respondent was convicted upon his plea of nolo contendere to driving with .08% or
5 higher blood alcohol level (Count 2), and evading arrest (Count 4). He was placed
6 on probation for 3 years with various terms and conditions. The court ordered him
7 to serve 2 days in county jail (with credit for 2 days), and complete a 3-month
8 licensed first-offender alcohol program. His driving privilege was restricted for 90
9 days. He was also ordered to serve 41 days in the electronic monitoring program.
10 Counts 1 and 3 of the complaint were dismissed as part of the negotiated plea
11 agreement.

12 September 27, 1994 Conviction

13 D. On or about August 14, 1994, Los Angeles police officers responded
14 to a domestic disturbance call. Respondent and his girlfriend had been involved in
15 an argument while driving. Respondent struck his girlfriend in her face with his
16 closed fist. When she turned away and yelled out of the window, Respondent hit
17 her back several times with a closed fist. When they arrived at their apartment
18 building, Respondent's girlfriend ran to a neighbor's apartment and called the
19 police. She told the officers that she feared for her life, and that Respondent had hit
20 her before. Respondent was arrested by the officers.

21 E. On or about August 16, 1994, in Los Angeles County Municipal
22 Court Complaint No. LA018340, Respondent was charged with inflicting corporal
23 injury on a spouse or cohabitant, in violation of Penal Code section 273.5(a), a
24 felony (Count 1). On or about August 25, 1994, the complaint was deemed
25 amended to allege Count 1 as a misdemeanor.

26 F. On or about September 27, 1994, pursuant to a negotiated plea
27 agreement, Respondent was convicted upon his plea of nolo contendere to inflicting
28 corporal injury on a spouse or cohabitant. He was placed on probation for two

1 years. The court ordered him to serve 120 days in county jail, and to complete a
2 6-month batterer's counseling program.

3 July 29, 1994 Conviction

4 G. On or about July 28, 1994, Los Angeles police officers made an
5 enforcement stop after observing Respondent straddling lanes with his vehicle and
6 exceeding the speed limit. He was talking loudly and pointing his finger at his
7 female passenger. When Respondent exited his vehicle, he started shouting and
8 walking towards two people that he knew. When the officers told him not to speak
9 to these people at this time, Respondent became aggressive, and shouted and swore
10 at the officers. After he was placed inside the police vehicle, Respondent kicked the
11 door of the vehicle which hit the police officer's leg. He was arrested for battery, in
12 violation of Penal Code section 243(b).

13 H. On or about July 29, 1994, in Los Angeles County Superior Court
14 Complaint No. 94P05901, Respondent was charged with resisting arrest/public
15 officer, in violation of Penal Code section 148(a) (Count 1), and battery, in violation
16 of Penal Code section 242-243(b) (Count 2).

17 I. On or about July 29, 1994, the complaint was amended by
18 interlineation to add disturbing the peace, in violation of Penal Code section 415
19 (Count 3). Pursuant to a negotiated plea agreement, Respondent was convicted by a
20 plea of nolo contendere to disturbing the peace (Count 3). The court ordered him
21 to pay a fine of \$60.00 and an assessment of \$102.00. Counts 1 and 2 of the
22 complaint were dismissed as part of the negotiated plea agreement.

23 August 29, 1991 Conviction

24 J. On or about August 7, 1991, in Los Angeles County Municipal Court
25 Complaint Number MA003133, Respondent was charged with possession of a
26 firearm by a felon, in violation of Penal Code section 12021(a), a felony, following
27 his arrest on August 5, 1991.

28 K. On or about August 29, 1991, Respondent was convicted upon his

1 plea of guilty to possession of a firearm by a felon. On or about October 4, 1991,
2 the court sentenced him to 2 years in prison (with credit for 92 days), and ordered
3 him to pay a restitution fine in the amount of \$100.00.

4 February 13, 1987 Conviction

5 L. On or about December 26, 1986, Respondent and a male companion
6 forced their way into a residence at gunpoint looking for money and drugs. They
7 forced the resident to lie on the floor. Respondent's male companion shot the
8 resident in the head, after he was recognized by the resident. On or about December
9 27, 1987, Los Angeles police officers arrested respondent for attempted murder.

10 M. On or about February 13, 1987, in Los Angeles County Superior
11 Court Complaint No. A706865, Respondent was convicted of attempted murder, in
12 violation of Penal Code section 664/187(a), a felony. The court sentenced him to 5
13 years in prison (with credit for 73 days) and ordered him to pay a \$100.00 restitution
14 fine.

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21 PRAYER

22 WHEREFORE, Complainant requests that a hearing be held on the matters
23 herein alleged, and that following the hearing, the Respiratory Care Board issue a decision:

- 24 1. Denying the application of Alden Edward Clark for a Respiratory
25 Care Practitioner License;
- 26 2. Directing Alden Edward Clark to pay the Respiratory Care Board the
27 costs of the investigation and enforcement of this case, and if placed on probation, the costs
28 of probation monitoring; and

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3. Taking such other and further action as deemed necessary and proper.

DATED: February 28, 2007

Original signed by Liane Zimmerman for:
STEPHANIE NUNEZ
Executive Officer
Respiratory Care Board of California
Department of Consumer Affairs
State of California
Complainant